

FIRST REGULAR SESSION

# SENATE BILL NO. 128

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RUPP.

Pre-filed December 18, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

0320S.011

## AN ACT

To repeal section 227.107, RSMo, and to enact in lieu thereof one new section relating to the authority to enter into design-build highway project contracts.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 227.107, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 227.107, to read as follows:

227.107. 1. Notwithstanding any provision of section 227.100 to the  
2 contrary, as an alternative to the requirements and procedures specified by  
3 sections 227.040 to 227.100, the state highways and transportation commission  
4 is authorized to enter into highway design-build project contracts. The authority  
5 granted to the state highways and transportation commission by this section shall  
6 be limited to a total of three design-build project contracts. Two design-build  
7 projects authorized by this section shall be selected by the highways and  
8 transportation commission from 1992 fifteen year plan projects. Authority to  
9 enter into design-build projects granted by this section shall expire on July 1,  
10 2012, unless extended by statute or upon completion of three projects, whichever  
11 is first.

12 **2. In addition to the three design-build highway project contracts**  
13 **authorized in subsection 1 of this section, the state highways and**  
14 **transportation commission is authorized to enter into an additional**  
15 **design-build highway project contract for the design, construction,**  
16 **reconstruction, or improvement of Missouri Route 364 as contained in**  
17 **any county with a charter form of government and with more than two**  
18 **hundred fifty thousand but fewer than three hundred fifty thousand**  
19 **inhabitants and any county with a charter form of government and**

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

20 **with more than one million inhabitants. The authority to enter into a**  
21 **design-build highway project contract under this subsection shall not**  
22 **be subject to the time limitation expressed in subsection 1 of this**  
23 **section.**

24           **3.** For the purpose of this section a "design-builder" is defined as an  
25 individual, corporation, partnership, joint venture or other entity, including  
26 combinations of such entities making a proposal to perform or performing a  
27 design-build highway project contract.

28           **[3.] 4.** For the purpose of this section, "design-build highway project  
29 contract" is defined as the procurement of all materials and services necessary for  
30 the design, construction, reconstruction or improvement of a state highway project  
31 in a single contract with a design-builder capable of providing the necessary  
32 materials and services.

33           **[4.] 5.** For the purpose of this section, "highway project" is defined as the  
34 design, construction, reconstruction or improvement of highways or bridges under  
35 contract with the state highways and transportation commission, which is funded  
36 by state, federal or local funds or any combination of such funds.

37           **[5.] 6.** In using a design-build highway project contract, the commission  
38 shall establish a written procedure by rule for prequalifying design-builders  
39 before such design-builders will be allowed to make a proposal on the project.

40           **[6.] 7.** In any design-build highway project contract, whether involving  
41 state or federal funds, the commission shall require that each person submitting  
42 a request for qualifications provide a detailed disadvantaged business enterprise  
43 participation plan. The plan shall provide information describing the experience  
44 of the person in meeting disadvantaged business enterprise participation goals,  
45 how the person will meet the department of transportation's disadvantaged  
46 business enterprise participation goal and such other qualifications that the  
47 commission considers to be in the best interest of the state.

48           **[7.] 8.** The commission is authorized to issue a request for proposals to  
49 a maximum of five design-builders prequalified in accordance with subsection 5  
50 of this section.

51           **[8.] 9.** The commission may require approval of any person performing  
52 subcontract work on the design-build highway project.

53           **[9.] 10.** The bid bond and performance bond requirements of section  
54 227.100 and the payment bond requirements of section 107.170, RSMo, shall  
55 apply to the design-build highway project.

56 [10.] 11. The requirements of subsection 9 of this section may be  
57 modified by the commission for any design-build highway project contract which  
58 is designated by the commission as a "design-build-finance-maintain" project, and  
59 for which the contract with the design-builder exceeds twenty-five years. For  
60 such projects, the commission shall require the design-builder to provide, or cause  
61 to be provided by the construction entity or entities providing construction  
62 services under contract to the design-builder directly, such bonds, or such other  
63 security, in such terms, durations, and amounts as the commission may  
64 determine to be adequate for its protection and provided by a surety, sureties, or  
65 financial institution or institutions satisfactory to the commission, including but  
66 not limited to:

67 (1) A bid or proposal bond, or other security authorized under subsection  
68 2 of section 227.100, in an amount of not less than five million dollars;

69 (2) A performance bond or bonds for the construction period specified in  
70 the design-build highway project contract in an aggregate amount of not less than  
71 two hundred million dollars or twenty-five percent of a reasonable estimate of the  
72 cost of construction work, whichever amount is lower, except the commission may  
73 allow other security in lieu of or in addition to any bond or bonds, including but  
74 not limited to letters of credit or other negotiable instruments, such other or  
75 additional security to be on such terms, for such durations, and in such amounts  
76 as the commission may determine to be adequate for the protection of the  
77 commission, and to be provided by sureties or financial institutions satisfactory  
78 to the commission; and

79 (3) A payment bond or bonds that shall be enforceable under section  
80 522.300, RSMo, for the protection of persons supplying labor and material in  
81 carrying out the construction work provided for in the design-build highway  
82 project contract. The aggregate amount of the payment bond or bonds shall equal  
83 a reasonable estimate of the total amount payable for the cost of construction  
84 work under the terms of the design-build highway project contract unless the  
85 commission determines in writing supported by specific findings that a payment  
86 bond or bonds in such amount is impractical, in which case the commission shall  
87 establish the amount of the payment bond or bonds; except that the amount of the  
88 payment bond or bonds shall not be less than the aggregate amount of the  
89 performance bond or bonds and the additional security to such performance bond  
90 or bonds, or in the amount of the other security used in lieu of the performance  
91 bond or bonds.

92           [11.] **12.** The commission is authorized to prescribe the form of the  
93 contracts for the work.

94           [12.] **13.** The commission is empowered to make all final decisions  
95 concerning the performance of the work under the design-build highway project  
96 contract, including claims for additional time and compensation.

97           [13.] **14.** The provisions of sections 8.285 to 8.291, RSMo, shall not apply  
98 to the procurement of architectural, engineering or land surveying services for the  
99 design-build highway project, except that any person providing architectural,  
100 engineering or land surveying services for the design-builder on the design-build  
101 highway project must be licensed in Missouri to provide such services.

102           [14.] **15.** The commission shall pay a reasonable stipend to prequalified  
103 responsive design-builders who submit a proposal, but are not awarded the  
104 design-build highway project.

105           [15.] **16.** The commission shall comply with the provisions of any act of  
106 congress or any regulations of any federal administrative agency which provides  
107 and authorizes the use of federal funds for highway projects using the  
108 design-build process.

109           [16.] **17.** The commission shall promulgate administrative rules to  
110 implement this section or to secure federal funds. Such rules shall be published  
111 for comment in the Missouri Register and shall include prequalification criteria,  
112 the make-up of the prequalification review team, specifications for the design  
113 criteria package, the method of advertising, receiving and evaluating proposals  
114 from design-builders, the criteria for awarding the design-build highway project  
115 based on the design criteria package and a separate proposal stating the cost of  
116 construction, and other methods, procedures and criteria necessary to administer  
117 this section.

118           [17.] **18.** The commission shall make a status report to the members of  
119 the general assembly and the governor following the award of the design-build  
120 project, as an individual component of the annual report submitted by the  
121 commission to the joint transportation oversight committee in accordance with the  
122 provisions of section 21.795, RSMo. The annual report prior to advertisement of  
123 the design-build highway project contracts shall state the goals of the project in  
124 reducing costs and/or the time of completion for the project in comparison to the  
125 design-bid-build method of construction and objective measurements to be utilized  
126 in determining achievement of such goals. Subsequent annual reports shall  
127 include: the time estimated for design and construction of different phases or

128 segments of the project and the actual time required to complete such work  
129 during the period; the amount of each progress payment to the design-builder  
130 during the period and the percentage and a description of the portion of the  
131 project completed regarding such payment; the number and a description of  
132 design change orders issued during the period and the cost of each such change  
133 order; upon substantial and final completion, the total cost of the design-build  
134 highway project with a breakdown of costs for design and construction; and such  
135 other measurements as specified by rule. The annual report immediately after  
136 final completion of the project shall state an assessment of the advantages and  
137 disadvantages of the design-build method of contracting for highway and bridge  
138 projects in comparison to the design-bid-build method of contracting and an  
139 assessment of whether the goals of the project in reducing costs and/or the time  
140 of completion of the project were met.

141 [18.] **19.** The commission shall give public notice of a request for  
142 qualifications in at least two public newspapers that are distributed wholly or in  
143 part in this state and at least one construction industry trade publication that is  
144 distributed nationally.

145 [19.] **20.** The commission shall publish its cost estimates of the  
146 design-build highway project award and the project completion date along with  
147 its public notice of a request for qualifications of the design-build project.

148 [20.] **21.** If the commission fails to receive at least two responsive  
149 submissions from design-builders considered qualified, submissions shall not be  
150 opened and it shall readvertise the project.

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